**HIGH COURT OF UTTARANCHAL AT NAINITAL.**

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

WRIT PETITION NO. 214 OF 2005 (S/B)

Date of Decision : 6th October, 2005

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for Signature.

**IN THE HIGH COURT OF UTTARANCHAL**

**AT NAINITAL**

**Writ Petition No. 214 of 2005 (S/B)**

1. State of Uttaranchal
   through District Magistrate, Almora
2. The Commissioner,
   Kumaon Division, Nainital
3. The Sub-Divisional Magistrate
   Pali, Ranikhet, Distt. Almora ... Petitioners

Versus

1. Devi Dutt Joshi
   S/o Sri K.N. Joshi
   Presently posted as Patwari
   Patwari Circle – Aadi Gaon,
   Tehsil – Chaukhutiya
   District – Almora
2. The Uttaranchal Public Service
   Tribunal, Dehradun ... Respondents

Shri K.P. Upadhyaya, learned Standing Counsel for the petitioners.

**Coram : Hon'ble Cyriac Joseph, C.J.**
**Hon'ble J.C.S. Rawat, J.**

**JUDGMENT**

**Per Hon'ble J.C.S. Rawat, J.**

1. By means of this Writ Petition moved under Article 226 of the Constitution of India, the petitioners have sought a writ in the nature of certiorari quashing the impugned judgment and order dated 20.04.2005 (Annexure-1) passed by respondent No. 2 in claim petition No. 122/T/02 Devi Dutt Joshi Vs. State & Others.

2. We have heard Sri K.P. Upadhyaya, Sanding Counsel for the State and perused the record.

3. It is an admitted case of the parties before the Uttaranchal Public Service Tribunal (hereinafter referred Tribunal) that the respondent No.1 Devi Dutt Joshi was appointed as a Patwari on 21.03.1979. He was posted as Patwari in Tehsil-Bageshwar in the year 1994 and he was handed over 330 pouches of illicit liquor recovered by the Gram Pradhan, Chandikhet and other local villagers from two persons on 17.01.1979. It was further reported to the respondent No. 1 on 23.01.1979 that those who were involved in the aforesaid incident also caused voluntary hurt to Anand Singh and Ramesh Giri of village Chandikhet. It was alleged that the respondent No. 1 did not conduct the investigation in a proper manner. Due to inaction on the part of Patwari, the Gram Pradhan, Shri Nargiri had to sit on fast and *Chakka Jam* was also observed by the local public. As such, the respondent No. 1 was placed under suspension on 16.02.1994 by the District Magistrate, Almora. The District Magistrate, Almora levelled the charges against the respondent No. 1 on 16.02.1994. Chargesheet was served upon respondent No. 1. on the same day.

4. In the chargesheet three charges were levelled against the respondent No. 1. The first charge against the respondent No. 1 was that on 17.01.1994, Gram Pradhan, Nargiri recovered 330 pouches of illicit liquor from two persons and handed over the same pouches to the respondent No. 1. The Gram Pradhan also disclosed the names of the

persons to the respondent no. 1 from whose possession illicit liquor was recovered. However, the respondent No. 1 did not take any action on the basis of the said report and he did not prepare the *Fard* of the recovered pouches. He did not submit any chargesheet under the Excise Act before the Court against the said accused. Due to inaction on the part of respondent No. 1, there was general resentment among the public in the area. It was further alleged in the first charge that on 21.01.1994 the aforesaid two persons voluntary caused hurt to Anand Singh and Ramesh Giri of village Chandikhet and later on they were abducted. It was further alleged in the charge that Anand Singh returned to his village on 22.01.1994 whereas the other person Ramesh Giri returned at his village in the morning of 23.01.1994. Anand Singh and Ramesh Giri specifically disclosed the names of Shri Girish Chandra Kandpal @ Pappu and Alok Tripathi who had voluntary caused hurt to Ramesh Giri and Anand Singh and abducted them. Due to inaction on the part of respondent No. 1, there was resentment among the public in the said Village and the said resentment resulted in an agitation.

5. The second charge against the respondent No. 1 was that he was found to be in collusion with liquor mafias against which the Gram Pradhan, Nargiri had to sit on fast which resulted in *Chakka Jam* by the local public on 23.01.1994.

6. The third charge against the respondent No. 1 was that on 07.08.1994 while the illicit liquor was recovered from the possession of two persons a quarrel took place between the Gram Pradhan and two persons. Rs. 2000/- were looted by the said persons from the Gram Pradhan in the said quarrel and the Respondent No. 1 had given assurance that Rs. 2000/- would be returned to Gram Pradhan. It had also been mentioned in the chargesheet that only following letters were proposed to be relied upon against the respondent No. 1 during enquiry.

1. Letter of Tehsildar, Ranikhet sent to S.D.M., Ranikhet on 24.01.1994.
2. Letter dated 27.01.1994 written by S.D.M., Ranikhet sent to D.M., Almora.

7. In the charge sheet it was not proposed to adduce any oral evidence in the matter and respondent No. 1 was called upon to answer the aforementioned charges within a period of 15 days. S.D.M.,Bageshwar was appointed as Enquiry Officer.

8. The respondent No. 1 submitted his reply to the charges on 11.03.1994 and denied all the charges levelled against him and stated that Gram Pradhan, Nargiri submitted a report to Supervisor, Kanoongo on 07.01.1994 with regard to the recovery of illicit liquor and causing voluntary hurt by two unknown persons. The Supervisor, Kanoongo did not proceed with the investigation and directed the respondent No. 1 to lodge the report and investigate the matter. The respondent No. 1

thereafter immediately lodged the F.I.R. as case crime No. 1/1994 under Section 60 of Excise Act and 504 and 506 I.P.C. on 07.01.1994. After lodging the F.I.R., he immediately proceeded with the investigation. He prepared the recovery memo of 330 pouches of illicit liquor on 07.01.1994 and Gram Pradhan was sent for medical examination.

9. Names of the accused were not disclosed to the respondent No. 1 and as such, the report was lodged against the unknown persons. It was further stated in his reply that on 21.01.1994, Grish Chandra Kandpal and others caused voluntarily hurt to Anand Singh and Ramesh Giri of village Chandikhet and the incident took place at Ram Nagar outside the jurisdiction of the patti Patwari. The said report was given to respondent No. 1 by Shri Anand Singh on 21.01.1994 and the said report was lodged and thereafter transmitted to police station Ram Nagar. It was further stated in the reply that Anand Singh told him orally that the persons who had voluntarily caused hurt to them were the same persons who had brought illicit liquor and from whose possession the said illicit liquor was recovered by the Gram Pradhan. The respondent No.1 visited Ram Nagar and he raided several places in order to apprehend the accused persons with the help of local police. He had made sincere efforts to arrest the accused and he was not in collusion with any liquor mafias in the area. He investigated the matter promptly and there was no inaction on his part. The respondent No. 1 had been

made the scapegoat only to satisfy Gram Pradhan, Nargiri of the area. The respondent No. 1 further stated in his reply that names of the accused persons were not disclosed to him and the accused could not be arrested and the amount of Rs. 2000/- could not be handed over to the Gram Pradhan. The respondent No. 1 has further stated in his reply that the report of Tehsildar, Ranikhet dated 21.04.1994 is an *ex parte report* and he had submitted it to the S.D.M. without any enquiry. He had further sated in his reply that the report of the S.D.M. dated 27.01.1994 submitted to D.M. was also based on wrong facts. He further stated in his reply that he wanted to produce Shri Puran Singh Bisht, Patwari, Chaukhutia in support of his contention during enquiry as a defence witness and further he requested to direct the aforesaid Patwari to bring the case diary alongwith him. At last, he had prayed that the charges framed against him may be dropped.

10. After concluding the enquiry, the S.D.M. submitted his enquiry report to the D.M. on 27.06.2004. The Enquiry Officer held with regard to charge sheet No. 1 that no names were disclosed by the Gram Pradhan to the respondent No. 1. The respondent No. 1 registered a criminal case against the unknown persons. The respondent No.1 also registered another case against unknown persons for causing voluntarily hurt to Anand Singh and Ramesh Giri. It was further held by the Enquiry Officer that prompt action was taken by the

respondent No. 1 in registering the case and starting prompt investigation after the registration of the cases. It was further held that respondent No.1 did nothing to arrest the accused with the help of the villagers which caused unrest among the villagers and the Tehsildar had to report the matter to the D.M. The Enquiry Officer concluded that charge no. 1 was found partially proved as the respondent No. 1 did not make any effort to arrest the accused persons with the help of villagers.

11. With regard to charge No. 2, the Enquiry Officer concluded that the respondent No. 1 was not found guilty of the said charge and he exonerated him from the said charge.

12. With regard to charge No. 3, the Enquiry officer held that the respondent N. 1 had not submitted any explanation regarding the said charge. However, the accused persons were unknown and could not be arrested, therefore, the amount looted could not be recovered and the respondent No. 1 could not return the money to Gram Pradhan. The Enquiry Officer further held that perusal of the report of the Tehsildar and the S.D.M. clearly revealed that respondent No. 1 was careless in performing his official duties and he should have controlled the inflow of illicit liquor in his area and he also failed to follow the instructions given by the S.D.M. from time to time. Thus the work and conduct of the respondent No. 1 was not found satisfactory and further it was held that the charge no. 3 was

partially proved against the respondent No. 1 The Enquiry Officer proposed an adverse entry in his character roll and recommended his transfer from the said place.

13. The report was submitted to the D.M., Almora on 18.01.1995 and the D.M., Almora passed an order by which the respondent No. 1 was reinstated in service and a punishment of stopping two increments for a period of 5 years was imposed on respondent No.1. Respondent No. 1 was also awarded an adverse entry in his character roll. The respondent No. 1 preferred an appeal before the Commissioner but the same was dismissed on 17.07.1997.

14. Feeling aggrieved by the said order the respondent No. 1 filed a Claim Petition before the Public Service Tribunal, U.P., Lucknow, bearing No. 2642 of 1997, challenging the order of punishment passed by the D.M., Almora on 18.01.1995 and the order dated 17.07.1997 passed by the Commissioner in appeal. After the creation of State of Uttaranchal, the Claim Petition was transferred to the Public Service Tribunal, Uttaranchal, Dehradun and was re-numbered as Claim Petition No. 122/T02. The said Claim Petition was allowed vide order dated 20.04.2005 by which the punishment order passed by the D.M. and the appellate order passed by the Commissioner were set aside.

15. Feeling aggrieved by the said order, the present writ petition has been filed by the petitioners challenging the order dated 20.04.2005 passed by the Tribunal and praying for a writ in the nature of certiorari quashing the impugned judgment and order dated 20.04.2005 (Annexure-1) passed by the respondent No. 2 in the aforesaid claim petition.

16. The learned Standing counsel contended that the learned Tribunal erred in holding that the respondent No. 1 was denied opportunity of hearing and was further denied opportunity to examine Shri Puran Singh Bisht, Patwari, Chaukhutia. He contended that the principles of natural justice were violated. The learned Standing Counsel further submitted that the said findings of the Tribunal are totally perverse and against the pleadings. Learned Standing Counsel further contended that the charges levelled against the respondent No. 1 were fully proved against him and the punishment awarded by D.M., Almora was just and proper.

17. The Tribunal has observed that from the enquiry report, it is clear that no witnesses were examined and no opportunity was afforded to the respondent No. 1 to meet the charges. Though, the respondent No. 1 applied for examination of the witnesses in his reply to the notice, his prayer was also not considered. The Tribunal has further observed that the enquiry report revealed that the punishment was based on some report of the

Tehsildar and no witnesses appeared to have been examined to prove the contents of the report; nor any opportunity was afforded to the respondent No.1 to meet the charges. There was no mention in charge No. 3 of any specific letter or order which had not been complied with by the respondent No. 1. The Tribunal has further observed that no punishment could have been awarded to the respondent No. 1 on this count without giving a proper opportunity of hearing. The learned Tribunal has further observed that the Enquiry Officer held the respondent No. 1 guilty, on the basis of the report which was not proved either by its author or by any other mode, which was again against the established principles of natural justice.

18. Perusal of the record reveals that while furnishing the chargesheet to the respondent No.1 two documents, i.e. letter of Tehsildar, Ranikhet sent to S.D.M., Ranikhet on 24.01.1994 and letter dated 27.01.1994 written by S.D.M., Ranikhet sent to D.M., Almora were proposed to be relied upon in evidence against the respondent No. 1 during the enquiry. The chargesheet itself shows that no oral evidence was proposed to be relied upon against the respondent No. 1 during the enquiry. The enquiry report clearly reveals that the enquiry officer has not taken any oral evidence during the course of the enquiry. He based his finding on the letters of Tehsildar and the S.D.M. referred above. The Enquiry Officer had not examined the Tehsildar or the S.D.M. to prove the contents of the said letters.

The Enquiry Officer had not recorded any evidence to ascertain the veracity of facts given in the letters. The Enquiry Officer, while concluding his finding with regard to charge No. 3, had held respondent No. 1 guilty of disobeying the instructions of his superiors which had not been specified in the said charge. The charge No. 3 did not mention any specific letter or instruction which was not obeyed by the respondent No. 1. There was no opportunity for respondent No. 1 to meet this allegation and no punishment could have been awarded to the respondent No. 1 on this count. The learned Tribunal was justified in arriving at the conclusion that there was no legal and admissible evidence to prove the charges levelled against the respondent No. 1. The Tribunal was further justified in quashing the impugned orders dated 18.01.1995 passed by the D.M., Almora and the Appellate Order dated 17.07.1997 passed by the Commissioner, Kumaon Division.

19. In view of the above, we are in complete agreement with the findings recorded by the Tribunal. Therefore, the petition is devoid of merit and is liable to be dismissed and the same is accordingly dismissed.

**(J.C.S. Rawat, J.)  (Cyriac Joseph, C.J.)**

06th October, 2005.
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